IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2401 of 2003
With
CIVIL APPLICATION No. 7939 of 2003
In
FIRST APPEAL No. 2401 of 2003
With
FIRST APPEAL No. 2402 of 2003
With
CIVIL APPLICATION No. 7941 of 2003
In
FIRST APPEAL No. 2402 of 2003
With
FIRST APPEAL No. 2403 of 2003
With
CIVIL APPLICATION No. 7942 of 2003
In
FIRST APPEAL No. 2403 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORP. - Appellant(s)

Versus

ROHITBHAI RASIKLAL SHAH - Defendant(s)

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Appearance :
MR BAIJU BHAGAT FOR MR HM BHAGAT for Appellant
MR SUNIT S SHAH for Defendant(s) : 1,
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HONOURABLE MR.JUSTICE R.S.GARG

CORAM :

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 05/09/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Admit. Mr. Sunit S. Shah, learned counsel for the respondent waives service of notice for admission.

2. With the consent of the parties, the matters are finally heard. This order shall dispose of First Appeal Nos. 2401 of 2003, 2402 of 2003 and 2403 of 2003.

3. Ahmedabad Municipal Corporation being aggrieved by the impugned orders is before this Court under Section 411 of the Bombay Provincial Municipal Corporations Act, 1949, with a submission that the judgment of the lower court is patently illegal and even if it could be held proper on the date of the delivery of the judgment i.e., on 1.10.99, the judgment in the matter of **Rajnikant Vs. Ramesh Chandra, reported in 1982 G.L.R. 71,** would not be applicable and cannot be applied to the facts of the case

in view of the authoritative pronouncement by a Division Bench of this Court in the matter of **Ahmedabad Municipal Corporation Vs. Dena Bank, reported in 2004 (2) GLR 1117.**

4. Learned counsel for the appellant-Corporation submits that the judgment of the court below proceeds on two factual foundations, firstly that the valuation report was produced before the Court and its exhibition was not objected to and secondly, Gross Rateable Value (G.R.V.) could be 7% of the cost of the construction in light of the judgment of this Court in the matter Rajnikant (supra). His submission is that the approach of the learned first appellate court was patently illegal and contrary to law, inasmuch as the learned court below has not seen that the valuation report was simply filed in the court, it was not exhibited in the sense as is required to be exhibited as a document in evidence and secondly that no tax amount was deposited by the present respondent before the learned appellate court and that the property in dispute was not residential property, but was used for commercial purposes.

5. Learned counsel for the respondent, on the other hand, submitted that the production of the valuation

report was not objected to by the present appellant, therefore, the learned court below was not unjustified in relying upon the contents of the same and that the appellant had an opportunity to cross-examine the valuer, who tendered his report, therefore, this grievance cannot be raised in this Court and the learned court below was absolutely justified in relying upon the judgment of this Court in the matter of Rajnikant (supra).

6. It is to be noted that the valuation report was not produced before the Assessing Officer nor the Assessing Officer had an opportunity to look into the documents or appreciate the contents of the said report. The said document was produced before the appellate court for the first time when the appeal was filed by the respondent, who happened to be the appellant before the court below and its production was not objected to by the present appellant.

7. It is trite law that production of a document is not its proof. When a particular document is sought to be adduced in evidence, then, a person who prepared the document i.e., the scribe or witness to the document is

required to be examined. If the person/scribe who prepared the document is available, then, such person would be required to prove the contents of the document. The valuation report is not a document the production of which is deemed to be its proof. It is a private document prepared by a private valuer and under the circumstances, its preparation and contents of the same are required to be proved in accordance with Section 3 of the Indian Evidence Act, 1872. A fact, if is asserted by a party and some evidence is led and the court relies upon the said evidence, then, it can be said that the document and the contents of the same are proved. The other party can still disprove the contents of the document by leading further evidence in the matter, saying that though the document was so prepared but it is a bad document and cannot be relied upon. In a case where a document is simply produced on the records, then, neither it is proved nor it is required to be disproved, because, it is a document which has not been proved in accordance with law.

8. Even otherwise, the additional evidence cannot be taken on records just for the sake of asking. Rule 27 of Order XLI of the Code of Civil Procedure says that

additional evidence can be taken on record in a case where trial court, which was duty bound to take evidence on the record has illegally refused to receive the evidence or a particular piece of evidence was not within the knowledge of the person trying to produce it or though it was within the knowledge of the person, but despite his best efforts, he could not procure the same and produce before the trial court and lastly that the document is required to be taken as additional evidence for just and proper disposal of the dispute pending consideration before the appellate court. Once the Court holds that the additional evidence deserves to be allowed, then, it shall allow the party relying upon it to prove its case and at the same time, the Court is also obliged to give proper opportunity to the other side to controvert or disprove the fact. So far as question of cross-examination is concerned a party must have a right and opportunity both, both must co-exist. A simple right with no opportunity or an opportunity with no right is not the requirement of law.

9. In the present matter, an application as contemplated under Order XLI Rule 27 of the CPC was not filed. In the absence of such application, the appellate

court could not take a document as legal evidence for purposes of disposal of the appeal. If the said document is ignored on the production, then, we would be left with the application or non-application of the judgment in the matter of Rajnikant (supra).

10. The said judgment has been explained by a Division Bench of this Court in the matter of Ahmedabad Municipal Corporation Vs. Dena Bank. It is also to be noted that the judgment in the matter of Rajnikant (supra) was a judgment under the provisions of the Bombay Rents, Hotels & Lodging House Rates Control Act, 1947 for determining the standard rent. The Division Bench in the matter of Ahmedabad Municipal Corporation (supra) has explained the effect and impact of the said judgment by observing that the reasonings given in the said judgment cannot be applied with blind-fold. The Division Bench has observed that the cost of the construction and price would be two different factors, while the value of the property would, altogether be different. In the present matter, the court below has misapplied the judgment of the learned Single Judge delivered in the matter of Rajnikant (supra).

11. Learned counsel for the respondent at this stage,

submits that as opposite party did not object to the production of the documents and it was understood by all concerned in the matter including the learned Judge that production was proof of the document, no further evidence was led to prove the document in accordance with law and if the document is ignored at this stage, it would cause irreparable injury to the respondent. He submits that the respondent be given proper opportunity to make an application before the appellate court and the trial court be required to decide the application in accordance with law. Though the learned counsel for the appellant opposes the prayer, but taking into consideration that the learned first appellate court had misapplied the law and had taken production of the document as proof of the same, we hold that the respondent is entitled to make an application.

12. For the reasons aforesaid, the impugned judgment in each case is set aside and the matters are remitted to the learned Small Causes Court No. 13 at Ahmedabad for redeciding all the matters in accordance with law and the observations made aforesaid after giving due opportunity of hearing to the parties and an opportunity to the present respondent i.e., the appellant before the

appellate court to make an application under Rule 27 or Order XLI of the C.P.C.

13. We make it clear that we are not directing the learned appellate court to admit evidence straightaway, but we are simply directing that the respondent shall be entitled to make an application and such application shall be considered and decided in accordance with law. The parties present in this Court shall appear before the learned Small Cause Court No. 13, Ahmedabad on 10th October, 2005. All the appeals are allowed with no order as to costs. Consequently Civil Applications are disposed of.

[R.S. GARG, J.]

[K.M. MEHTA, J.]

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